

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

CHELSEA GILLIAM, et al.,
Plaintiffs,
vs.
DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES, et al.,
Defendants.

CIVIL NO.:
1:23-cv-01047-MJM
VOLUME III (Excerpt)

Baltimore, Maryland
December 1, 2023
10:19 a.m.

TRANSCRIPT OF PROCEEDINGS
MOTIONS HEARING EXCERPT - COURT'S RULING
BEFORE THE HONORABLE MATTHEW J. MADDOX
Via Videoconference

For the Plaintiffs:

JESSICA P. WEBER, Esquire
LAUREN A. DIMARTINO, Esquire
SHARON K. WEISBAUM, Esquire
EVAN MONOD, Esquire
Brown Goldstein and Levy LLP
120 E. Baltimore Street, Suite 1700
Baltimore, MD 21202

DEBORAH M. GOLDEN, Esquire
The Law Office of Deborah M. Golden
700 Pennsylvania Ave. SE, 2nd Floor
Washington, DC 20003

For the Defendants:

KELLY M. DONOHO, Esquire
MERRILYN E. RATLIFF, Esquire
Office of the Attorney General
6776 Reisterstown Road, Suite 313
Baltimore, MD 21215

Also Present: Chloe Grey
(Computer-aided transcription of stenotype notes)

P R O C E E D I N G S

(Excerpt from December 1, 2023 Motions Hearing)

THE COURT: All right. So moving forward, currently pending is a motion by the plaintiff, Chloe Grey, for temporary restraining order or preliminary injunction. That motion is opposed by the defendants in this case. The motion is fully briefed and each of the parties have attached several exhibits to their briefs. At the plaintiff's request, an evidentiary hearing was scheduled, and we have just concluded that hearing which began last week. During the hearing, each of the parties presented additional evidence and testimony and provided oral arguments for their respective positions.

I note at the outset that the hearing was not one in which the Federal Rules of Evidence strictly applied. For that I'm going to cite Supreme Court case *University of Texas v. Camenisch*, 451 U.S. 390, from 1981. There's also the Fourth Circuit case, *Grimm v. Gloucester County School Board*, 822 F.3d 709, Fourth Circuit case from 2016. There's also District Court of Maryland cases on the same issue.

Furthermore, I recognize that the parties have not had a full opportunity to conduct meaningful discovery in this case as of yet. For these reasons, I will emphasize here that the findings of fact that I'm about to make will be made solely for purposes of deciding the pending motion, and those findings and my decision on the matter will be made without prejudice to

1 any later motion, trial or other court proceeding.

2 Now making these findings has required me to resolve
3 certain controversies in the evidence that's been presented
4 here, including material inconsistencies potentially between
5 the testimonies of different witnesses. Any credibility
6 determinations I have made are based on having sat for and paid
7 attention to the presentation of the evidence at this hearing
8 which was conducted by video teleconference and reviewed the
9 parties' exhibits attached to their briefs, and I've also noted
10 impeachment of some of the witnesses presented here. With all
11 of that said, I'll make the following findings.

12 On the plaintiff, Ms. Grey is a transgender woman
13 with gender dysphoria and other mental health disorders and a
14 feminine appearance, serving a life sentence in the custody of
15 the Department of Public Safety and Correctional Services, and
16 she's serving that sentence for the murder of two women. Her
17 biological sex at birth was male.

18 Gender dysphoria is a disability and a serious
19 medical condition due in part to the risk of suicide,
20 autocastration and negative emotional presentation. Pain and
21 suffering and suicidality are associated with gender dysphoria,
22 and gender dysphoria has been treated and addressed in medical
23 interventions like hormone therapy, sex reassignment surgery,
24 facial hair inhibition and what's been termed as social
25 transition.

1 The plaintiff has an individualized treatment plan to
2 address not just the gender dysphoria but potentially other
3 medical conditions that she is contending with.

4 In 2017 the plaintiff was incarcerated at the
5 facility WCI, and in December of 2020 she began her transition;
6 the plaintiff began her transition while still housed at WCI.
7 In March of 2021 the plaintiff was diagnosed with gender
8 dysphoria. In December of 2021 the plaintiff began hormone
9 treatment and has since developed breasts, decreased muscle
10 tone and strength, shrunken and sexually nonfunctional external
11 genitalia, and less facial hair and less body hair.

12 I understand that the standard of care for the
13 administration of hormone therapies specifically requires
14 consistency. Missed doses can have serious consequences for a
15 patient, including what Dr. Lowell described as an accelerated
16 menopause, mood swings, dysphoric feelings, spikes in blood
17 pressure, increased blood flow and functionality of male
18 genitalia which can, in turn, result in worsening dysphoric
19 feelings.

20 At some point, the plaintiff wrote to the warden at
21 WCI to request placement at a women's facility, having suffered
22 from sexual harassment and threats from male prisoners at that
23 facility. Plaintiff also contends that she was sexually
24 assaulted at WCI and was placed on administrative segregation
25 following that for approximately one month.

1 Around late April, early May of 2023, the plaintiff
2 submitted an ARP complaining about her placement in a male
3 institution and requesting transfer to a women's institution.
4 She was told to speak with a staff member at WCI who rejected
5 the request, and I understand that there may have been some
6 expression of animus or animosity towards transgender persons
7 in that denial. She never withdrew that request.

8 In late July of 2023, the plaintiff submitted an ARP
9 complaining about discrimination at WCI, including slurs
10 against transgender persons. She never withdrew that complaint
11 either. She was told that it was not enough information
12 provided in that complaint and -- [audio gap] -- specific
13 examples in order for it to be investigated, and ultimately it
14 was found unfounded by the department.

15 In late July of 2023 also, the plaintiff was
16 prescribed facial hair inhibitor cream, but in the following
17 month it was determined that that inhibitor cream was no longer
18 available in the United States or the prescription ceased at
19 that point. Plaintiff contends that she never received that
20 treatment cream. But some evidence was presented during the
21 course of this hearing to suggest that there are comparable
22 products on the market on an open counter basis.

23 On September 7, 2023, the plaintiff was placed at
24 Patuxent Institution on the male Georgetown University tier to
25 participate in an education program there. She was not

1 assigned a cellmate at that point, but she was told that
2 assignment of a male cellmate was being contemplated or
3 planned. She then requested to share a cell with a cisgender
4 male inmate, Scott Brill, who also had been transferred from
5 WCI. She contends that Brill was the only male inmate that she
6 felt safe sharing a cell with. She has referred to Brill as
7 her husband and does not dispute that there was some form of
8 sexual relationship between her and Mr. Brill.

9 On September 8 of this year, Assistant Warden Stewart
10 received a request from the plaintiff and Mr. Brill to share a
11 cell, and she also received information regarding their sexual
12 relationship and on that basis denied the request. Indeed she
13 contended that it would have been negligent or incompetent on
14 her part to have granted such a request given the potential
15 risk that sexual relationships present to inmates' safety
16 including risk of nonconsensual sex or sexual assault.

17 The plaintiff requested again to be housed -- the
18 plaintiff then requested to be housed alone if not housed with
19 Mr. Brill, and Assistant Warden Stewart approved that request
20 on a temporary basis. According to Assistant Warden Stewart,
21 the plaintiff never made any request to be placed on the
22 women's tier of Patuxent Institution, and no evidence has been
23 presented to suggest that that request was made to A.W.
24 Stewart. Actually insofar as the plaintiff claims she made
25 that request to A.W. Stewart, I find A.W. Stewart's testimony

1 on that matter to be more credible.

2 I understand that in mid September 2023, there were
3 issues surrounding the Georgetown University program involving
4 the plaintiff and there were some discussions between Assistant
5 Warden Stewart and the plaintiff about her involvement in that
6 program. And in connection with that, the plaintiff made
7 allegations about being on the receiving end of abusive
8 language and slurs at Patuxent, and A.W. Stewart spoke to the
9 tier about those allegations and made admonitions against the
10 mistreatment that the plaintiff had claimed that she was
11 suffering from.

12 Also around that same time, the plaintiff signed for
13 a 30-day supply of Estrace. And she also signed for a 30-day
14 supply of Aldactone.

15 Assistant Warden Stewart, toward the end of
16 September, contacted a mental health professional so that the
17 plaintiff could be seen based upon complaints that she had
18 made, and an arrangement was made for her to meet the social
19 worker, Ms. Decker, at Patuxent. The plaintiff reported to
20 Ms. Decker that she had been assaulted at WCI but did not
21 provide specific information about those assaults. The matter
22 was referred for investigation, but ultimately the plaintiff
23 decided not to pursue those allegations.

24 And then the plaintiff complained to Assistant Warden
25 Stewart that she was being sexually harassed and threatened

1 with violence by male inmates, but she did not provide specific
2 details -- or specific enough details about those instances in
3 order for it to be investigated. And, in fact, later on I do
4 recall seeing written statements by the plaintiff indicating
5 that she had not been threatened, that she didn't have concerns
6 about being threatened or any danger that she faced among the
7 male population at Patuxent.

8 It sounds like on a serial basis, Assistant Warden
9 Stewart denied requests that plaintiff had made to be housed
10 with Mr. Brill.

11 In late September 2023, the plaintiff met with
12 counsel regarding potentially joining this lawsuit.

13 Around October 7, 2023, the plaintiff signed for
14 another 30-day supply of Estrace.

15 On October 13th, a confidential informant reported a
16 disciplinary infraction by the plaintiff, specifically sexual
17 contact between the plaintiff and a cisgender male inmate whose
18 last name is Bell, and there was also a report that the Muslim
19 community there at Patuxent was upset about what was perceived
20 as an act of disrespect through that encounter. According to
21 the plaintiff, that allegation was false.

22 The investigation of the matter revealed rumors about
23 potential retribution or retaliation by Brill or members -- and
24 members of the Muslim community against Mr. Bell or the
25 plaintiff, and it also revealed that rumors about sexual

1 encounter between the plaintiff and Bell were believed -- was
2 conducted into whether or not a sex act had indeed occurred and
3 whether or not it was not consensual.

4 At that point the plaintiff was placed in
5 administrative segregation for her protection which was I
6 understand to be the ordinary response, and at that point her
7 medications were taken, medications that she had in her
8 possession on a keep-on-person basis pursuant to prison
9 policies.

10 The plaintiff reports uncomfortable conditions while
11 in administrative segregation and she also reports
12 inconsistencies in her receipt of hormone treatment during that
13 time period. Unfortunately, the cameras on that tier are
14 nonfunctional, so there's been no camera or surveillance
15 evidence presented in this case one way or the other to address
16 the dispute between the parties about how consistent the
17 medical treatment has been.

18 The plaintiff also contends that she was denied
19 access to educational materials from the time that she entered
20 segregation. It does appear that based upon the testimony of
21 Assistant Warden Stewart that the plaintiff had access to
22 recreation and also access to the day room, showers multiple
23 times per week, medical services, pens, papers, a tablet,
24 access to the educational materials as those materials became
25 available from Georgetown University.

1 Plaintiff contends that she was subject to random
2 strip searches during her time in administrative segregation
3 and following her legal visits with her counsel.

4 In mid October of 2023, the plaintiff was sexually
5 harassed by a male inmate named Williamston who exposed his
6 penis and demanded oral sex. He was permitted to leave his
7 cell apparently because he was on a sanitation detail. The
8 plaintiff called for assistance but claims that there was no
9 response. A few days later -- the next day the plaintiff
10 refused a PREA assessment according to the affidavit submitted
11 by Dr. Jerkins.

12 The day after that on October 17, the administrative
13 segregation review team met to discuss plaintiff's status on
14 that administrative segregation and decided to continue her on
15 administrative segregation pending the investigation about the
16 threat to her safety due to the rumor surrounding whether she
17 had had sex with Bell during a Muslim service. The plaintiff
18 reported to the social worker, a Ms. Decker -- had reported the
19 encounter with Mr. Williamston during a meeting with
20 Ms. Decker, and that matter was then referred for
21 investigation.

22 On October 20, 2023, a disciplinary infraction as to
23 the assault by Williamston on Ms. Grey was found to be
24 unfounded after -- I'm sorry. The assault as to the -- any
25 alleged assault between the plaintiff and Mr. Bell was found to

1 be unfounded due to those two individuals declining to pursue
2 charges. But the plaintiff remained in segregation according
3 to the department because of a rumor about whether or not those
4 two individuals had sexual contact, and that's a matter that
5 remained under investigation at the time. Around that same
6 time, Mr. Bell was released from segregation.

7 Around the same time, an investigation of any sexual
8 assault against the plaintiff at WCI was closed when the
9 plaintiff stated lack of interest in pursuing those charges.

10 On October 24, Captain Carter met with the plaintiff
11 about her complaints. At that point according to his document,
12 there was a denial that there was -- denial by the plaintiff
13 that she had been denied writing implements and lack of
14 access -- there was no complaint about being denied writing
15 implements or lacking access to razors at that point in time,
16 and she also, according to Captain Carter's report, denied --
17 confirmed that she had access to pens and paper and a tablet
18 and showers, but she reported that she was still retaliated
19 against and made other complaints about missing documentation
20 and having been placed on administrative segregation.

21 On October 30, the plaintiff was given access to a
22 packet of Georgetown University program school work, and this
23 reportedly was the first packet that was submitted by
24 Georgetown University since the time she had entered
25 administrative segregation. The plaintiff was strip-searched

1 after a legal visit that she had with her counsel on
2 October 30, but apparently that's a routine procedure at the
3 facility. On that same date, plaintiff's counsel made a
4 request to defendant's counsel that the plaintiff be
5 transferred to a women's general population facility.

6 In early November, plaintiff contends that a heater
7 was directed at her cell and turned up. I understand this is a
8 disputed issue, but plaintiff testified that this situation
9 made the cell unbearably hot. Also around this same time
10 there's no dispute that she missed a dose of Estrace.

11 Dr. Jerkins testified earlier today that blood work
12 conducted in October showed normal levels of estrogen, but it's
13 unknown when in October that blood work was conducted. No
14 witness has been presented who observed the plaintiff receiving
15 her hormone medication on a consistent basis.

16 Another dose of Estrace was missed on the following
17 day on November 2nd, but Estrace administration was resumed on
18 October 3rd. Plaintiff contends that this was the first time
19 that she had received Estrace since the time that she entered
20 administrative segregation.

21 Around that same time, Assistant Warden Stewart
22 learned that the alleged sexual encounter between Mr. Bell and
23 the plaintiff did not occur during a Muslim service but during
24 an AA meeting. Plaintiff contends that she was denied access
25 to razors during this time period and hair started to grow

1 back, and she was not allowed to shave.

2 Two days later, Patuxent officials determined that
3 the plaintiff was aware of the identity of the confidential
4 informant that had reported her alleged conduct with Mr. Bell.
5 The plaintiff indicates in those messages a potential intent to
6 retaliate based upon information received from the internal
7 intelligence department in a recorded phone contact between the
8 plaintiff and other individuals.

9 Patuxent's officials also learned that the plaintiff
10 and Mr. Brill passed messages to each other through a third
11 party which would be a disciplinary infraction. These were
12 messages about sex, about money transactions, about gang
13 activity, and also at least veiled threats against the
14 confidential informant, discussion about gang leaders and other
15 matters that raised concerns in light of the observations by
16 Brill that the confidential informant was still breathing,
17 quote/unquote. So based upon that, a decision was made not to
18 return the plaintiff to general population due to a risk of
19 retaliation by either the plaintiff or Mr. Brill against the
20 confidential informant.

21 Around that same time Georgetown University provided
22 the second packet of school work that was conveyed to the
23 plaintiff.

24 Now on or around the date that the plaintiff had a
25 legal visit around November 8 or November 9 of 2023, she

1 contends that she was pushed down a flight of stairs while in
2 handcuffs, maybe not a full flight of stairs but several steps,
3 and that her face was pushed against the wall and that she was
4 groped and received threats from correctional officers.

5 Also around the same time period, there was a
6 reported incident in the yard, in the recreation yard where the
7 plaintiff was allegedly asking other inmates to expose
8 themselves and offering sexual favors. A violation allegation
9 was made at that point in time, and an investigation was
10 conducted. Assistant Warden Stewart observed at least part of
11 this incident but did not observe all of it.

12 Plaintiff was then strip-searched and allegedly there
13 was indication of the plaintiff reaching for possible
14 contraband which is the reason for the strip search. There
15 was, I believe, testimony offered that the strip search may
16 have lasted about five minutes.

17 The plaintiff also again had a legal visit on that
18 date around 10:20 a.m. Some issues were raised during the
19 course of this hearing about the implausibility of the timing
20 here. As to the department's position on the events in the
21 yard and the circumstances of the strip search, I don't find
22 that the timing is implausible based upon the evidence that was
23 presented here, and I do find that the events are -- the events
24 surrounding the strip search are consistent with them having
25 potentially happened before the legal visit. The plaintiff did

1 complain about the strip search, but a written complaint was
2 not completed.

3 On November 10, the plaintiff was served two
4 infraction notices about her use of the tablet to convey
5 messages and about sexual solicitation during the yard
6 incident. The plaintiff demanded to be allowed to file a PREA
7 complaint, and she also made allegations about the assault that
8 she contends occurred the day before.

9 She refused to be seen by medical staff at Patuxent,
10 was transferred to Mercy for a safe evaluation, and during that
11 evaluation some bruising was found around her left breast.
12 When she was returned to the facility, the nursing notes at the
13 facility did not reflect any indication of sexual assault.
14 There was no indication that anyone from the facility or anyone
15 from the department reviewed the medical records from Mercy.

16 On November 11 the plaintiff alleged that she was
17 denied hormone therapy and received only one meal that day, and
18 she contends a course of retaliatory actions, including the
19 denial of the hormone treatment, from that date forward.

20 On November 15, the plaintiff received disciplinary
21 hearings on impending infractions and was found in violation of
22 having made the three-way messages and having engaged in that
23 way in sexual conduct but was not found liable for any threats.
24 She was sanctioned with 50 days in disciplinary segregation,
25 the loss of a phone or tablet for 30 days, and I understand

1 that she remains in disciplinary segregation to this date.

2 The defendant Brill was found guilty of threats and
3 misuse of the tablet. However, he was not -- he did not face
4 any charges surrounding the sexual solicitation that had
5 allegedly occurred in the yard.

6 There may be other factual findings that I make in
7 the course of my ruling on this matter which I will now turn
8 to. So as I understand it, various forms of injunctive relief
9 are being requested by the plaintiff in this case, including
10 consistent treatment for the hormone medication that the
11 plaintiff has been prescribed, ceasing of retaliatory actions,
12 and transfer to a women's institution.

13 The purpose of a temporary restraining order or
14 preliminary injunction is to protect the status quo and to
15 prevent irreparable harm during the pendency of a lawsuit and
16 ultimately to preserve the Court's ability to render a
17 meaningful judgment on the merits. It should not be availed to
18 secure a piecemeal trial. This holds especially true in cases
19 involving prisoners challenging the conditions of their
20 confinement where judicial relief is further limited by the
21 Prison Litigation Reform Act which states that a Court shall
22 not grant or approve any prospective relief unless the Court
23 finds that such relief is narrowly drawn, extends no further
24 than necessary to the correct the violation of the federal
25 right, and is the least intrusive means necessary to correct

1 the violation of the federal right.

2 The Court is also required to give substantial weight
3 to any adverse impact on public safety or the proper
4 administration or operation of the criminal justice system.

5 There are four factors to be considered when deciding
6 to grant preliminary injunctive relief: the likelihood of
7 irreparable harm to the plaintiff if the preliminary injunction
8 is denied, the likelihood that the plaintiff will proceed on
9 the merits of her claims, the balance of the equities and the
10 public interest.

11 The Fourth Circuit has held that the authority of the
12 district court to issue an injunction should be sparingly
13 exercised. A mandatory preliminary injunction may not preserve
14 the status quo and normally should be granted only in those
15 circumstances that the exigencies of the situation demand such
16 relief.

17 To address likelihood of irreparable harm, the
18 existence of irreparable harm is a prerequisite to the issuance
19 of injunctive relief. The irreparable harm that the plaintiff
20 would suffer should the Court deny injunctive relief must be
21 both actual and immediate. That the plaintiff may have
22 suffered past injuries is not enough to rise to the level of
23 irreparable injury. A higher standard of irreparable injury is
24 applied in situations where courts traditionally give
25 deference.

1 I do believe that the plaintiff has demonstrated
2 likelihood of irreparable harm should her hormone therapy not
3 be administered on a consistent basis as she has testified has
4 been prescribed to her. But I believe the plaintiff has failed
5 to establish the likelihood of irreparable harm that would
6 result if she is not transferred to a facility designated for
7 women. The plaintiff has claimed a need for social transition
8 in the form of a transfer to a women's facility as a sort of
9 treatment for gender dysphoria. Dr. Lowell's testimony has
10 been offered to support this claim. I'm not persuaded by that
11 testimony.

12 I find more credible and compelling the indication in
13 the department's gender dysphoria policy that gender dysphoria
14 as a diagnosis calls for individualized treatment, based upon
15 consultation with the inmate's treating psychiatrist and other
16 service providers, as well as experts on mental health
17 treatment in correctional settings. Additionally, the DOJ PREA
18 Prison and Jail Standards rule provides that agencies must make
19 individualized determinations about how to ensure the safety of
20 each inmate and to make determinations on a case-by-case basis
21 whether a placement at a facility designated for the
22 transgender inmate's gender identity would ensure the inmate's
23 health and safety and whether such a placement would present
24 management or security problems.

25 Dr. Lowell has not examined, treated or provided

1 services to the plaintiff and is not offered as an expert on
2 mental health treatment in correctional settings. The
3 plaintiff has presented no evidence that social transition has
4 been prescribed to her by a medical profession who has examined
5 her, and I do not find that social transition in the form of
6 transfer to a women's facility is medically necessary to the
7 plaintiff based upon the record in front of me.

8 However, irreparable harm would likely result if the
9 department fails to make an individualized assessment regarding
10 her housing placement, including whether it should place the
11 plaintiff in a women's facility and whether social transition
12 is medically necessary for her.

13 The department's policy on gender dysphoria is
14 designed to "diagnose, treat and manage inmates diagnosed with
15 gender dysphoria in a manner consistent with appropriate
16 treatment, custody and security standards." If the policy is
17 not followed in the plaintiff's case, it could pose serious
18 risks to her personal health and safety. Following this policy
19 is necessary to ensure the plaintiff's health and safety.

20 The plaintiff has alleged additionally alarming
21 physical abuse by members of correctional staff at Patuxent
22 Institution, including an incident in November of 2023
23 regarding being pushed down steps and being assaulted and
24 threatened. I am not sure that the alleged abusers were
25 specifically identified in the plaintiff's testimony. It does

1 not appear the department has completed its investigation of
2 that matter. However, plaintiff's testimony at this juncture
3 is sufficient to establish a likelihood of irreparable harm in
4 the absence of injunctive relief, given that the plaintiff in
5 her current placement likely remains accessible to her alleged
6 abusers.

7 Assuming her allegations to be true as she has
8 testified, I do not find the transfer to a women's tier or
9 women's facility would redress the concerns of physical abuse.
10 I'm speaking specifically about the women's tier at Patuxent
11 because allegedly the alleged abusers also work there.
12 Placement at MCIW may provide redress, but there may be more
13 narrowly drawn alternatives to ordering her to be transferred
14 to MCIW at this time.

15 Moving on to likelihood of success on the merits, the
16 complaint in this case has set forth several claims, several
17 bases, several legal grounds for relief. Taking them one by
18 one, at Count 4 there is a claim made under § 1983 for an
19 Eighth Amendment failure to protect allegation, based upon the
20 defendants having disregarded the safety risk by placing the
21 plaintiff with male inmates.

22 This 1983 claim calls for a two-part test. First,
23 there must be a serious deprivation of the plaintiff's rights
24 in the form of a serious or significant physical or emotional
25 injury or a substantial risk thereof. This is an objective

1 inquiry. It requires the Court to assess whether society
2 considers the risk that the prisoner complains of to be so
3 great that it violates contemporary standards of decency to
4 expose anyone unwillingly to such a risk.

5 Second, the plaintiff must establish that the prison
6 official had deliberate indifference to the inmate's health or
7 safety, and that requires actual knowledge of an excessive risk
8 to the plaintiff's safety. The defendant must be aware of
9 facts from which the inference could be drawn that a
10 substantial risk of serious harm exists, and the defendant must
11 also draw that inference. However, prison officials who
12 actually knew of a substantial risk to inmate health or safety
13 may be found free of liability if they responded reasonably to
14 the risk. And for all of that, I would rely upon the Fourth
15 Circuit case *Raynor v. Pugh* at 817 F.3d 123, a decision from
16 2016.

17 So I do not find a likelihood of success on the
18 merits of this claim at this stage of the litigation. The
19 plaintiff has failed to make a showing that the defendants had
20 actual knowledge of an excessive risk to her safety by placing
21 her on the male Georgetown U tier at Patuxent adequate to
22 demonstrate a likelihood of success on the merits of that claim
23 in Count 4.

24 To the contrary, when the defendants -- meaning the
25 facility, the officials at Patuxent became aware of the safety

1 risk that would be posed by the plaintiff being among other
2 inmates at Patuxent, the defendants elected to keep her in
3 administrative segregation to protect her on a temporary basis.
4 Over at least one -- or perhaps even multiple complaints that
5 were made by the plaintiff disclaimed any threats against her
6 or dangers that she faced among the general male population at
7 Patuxent.

8 Next on Count 5 which is a 1983 claim, Eighth
9 Amendment failure to provide medical care. That claim is based
10 upon the defendant having refused to give the plaintiff hormone
11 therapy and disregarded her health risk that would attend that
12 refusal. The Eighth Amendment's prohibition on cruel and
13 unusual punishment imposes duties on prison officials to
14 provide adequate medical care. To establish a deliberate
15 indifference claim, the plaintiff must demonstrate that the
16 defendant prison official acted with deliberate indifference to
17 the plaintiff's serious medical needs. That's both a
18 subjective and an objective component. There must be a serious
19 medical condition that needs to be addressed, and that's one
20 that's been diagnosed by a physician as mandating treatment or
21 it's so obvious that even a layperson would easily recognize
22 the necessity for a doctor's attention.

23 The defendant acts with deliberate indifference if he
24 had actual knowledge of the plaintiff's serious medical needs
25 and the related risk but nevertheless disregarded them. Once

1 prison officials are aware of a serious medical need, they need
2 only respond reasonably to the risk. The prisoner does not
3 enjoy the constitutional right to treatment of his or her
4 choice so long as the medical treatment provided is adequate.
5 The treatment must be given and must not be so grossly
6 incompetent, inadequate or excessive as to shock the conscience
7 or to be intolerable to fundamental fairness. And for that --
8 well, one additional point.

9 To establish liability based upon a delay in medical
10 treatment, a plaintiff must show deliberate indifference to
11 serious medical needs that resulted in substantial harm. I'm
12 citing a case called *Lowe v. Johnson* which is a Fourth Circuit
13 case from earlier this month -- actually at the beginning of
14 November.

15 So I do find the likelihood of success on the merits
16 of this claim at this stage of the litigation. I've been
17 presented with evidence of the plaintiff through her testimony
18 having received inconsistent and spotty hormone therapy and
19 having made complaints to prison officials at Patuxent based
20 upon that deprivation which would establish the defendant's
21 actual knowledge. Now I understand this is a disputed matter
22 but the only competent evidence that I had in front of me was
23 that the hormone therapy had been intermittent and
24 inconsistent.

25 Moving on to Count 6 which is the Section 1983 claim

1 for cruel and unusual punishment under the Eighth Amendment.
2 That's based upon the defendants having placed the plaintiff in
3 administrative segregation based on her transgender status and
4 in retaliation and having disregarded that risk.

5 Like any Eighth Amendment claim, an Eighth Amendment
6 claim against conditions of confinement has both objective and
7 subjective opponents. To satisfy the objective prong, a
8 plaintiff inmate must demonstrate that the deprivation alleged
9 was objectively and sufficiently serious. To be sufficiently
10 serious, the deprivation must be extreme, meaning that it poses
11 a serious or significant physical or emotional injury resulting
12 from the challenged conditions or a substantial risk of serious
13 harm resulting from exposure to the challenged conditions.

14 To satisfy the objective prong, the plaintiff must
15 demonstrate that the prison officials acted with deliberate
16 indifference and that the official knew of and disregarded
17 excessive risk to inmate health or safety. I'm citing the case
18 *Porter v. Clarke* which is at 923 F.3d 348, Fourth Circuit case
19 from 2019.

20 I do not find a likelihood of success of merits on
21 this claim at this stage of the litigation. The plaintiff
22 failed to make an adequate showing that her confinement in
23 segregation has posed objectively sufficiently serious or
24 extreme risk to her health or safety. Notably, the plaintiff
25 testified that she wished to be placed in the women's facility

1 or the women's tier even if it meant being placed in
2 segregation, suggesting that segregation itself does not carry
3 an extreme risk of health or safety.

4 There is one caveat to this finding, however. There
5 is the matter of about whether or not excessive heat has been
6 directed to the plaintiff in her cell while in segregation.
7 The plaintiff contends that is a condition that's ongoing. I
8 believe that the evidence is too incomplete from my purposes to
9 really make any ruling on that. I believe that I can address
10 that through requiring further testimonial statements from
11 prison officials at Patuxent about the status of that heater.

12 Beyond that, beyond the heater issue, as to the
13 subjective prong, the plaintiff failed to make an adequate
14 showing that the defendants were aware but disregarded an
15 excessive risk to her health or safety. Moreover, the Court is
16 disinclined from second-guessing the defendant's decision to
17 place the plaintiff in administrative segregation in the
18 circumstances of this case. She was placed in segregation
19 apparently for legitimate security and safety-related reasons,
20 and the department has engaged in regular deliberations
21 regarding whether she should remain in segregation and made
22 apparently reasonable decisions to keep her in segregation for
23 the period that she was there before she was placed in
24 disciplinary segregation.

25 Turning to the next claim, Count 7, Section 1983, sex

1 discrimination. That is based upon the defendants having
2 housed the plaintiff with male inmates in spite of her gender
3 identity and having risked sexual assault and the defendants
4 having denied medical treatment. The Equal Protection Clause
5 under the Fourteenth Amendment keeps governmental decision
6 makers from treating differently persons who are in all
7 relevant respects alike. So to state a claim for a violation
8 of this clause, the plaintiff must plausibly allege first that
9 she has been treated differently from others with whom she is
10 similarly situated and that the unequal treatment was a result
11 of intentional, purposeful discrimination.

12 She must also plausibly allege that disparity was not
13 justified under the appropriate level of scrutiny. And to
14 account for unique health or welfare concerns in the prison
15 context or the court's review of a plaintiff's challenge to a
16 prison decision or policy is more demanding because courts
17 accord deference to the appropriate prison authorities. Under
18 a deferential standard, the prisoner must allege disparate
19 treatment was not reasonably related to legitimate penological
20 interests. The factors to be considered in making this
21 determination by the Court include the fact that there must be
22 a valid rational connection between the prison regulation or
23 the prison action and the legitimate governmental interests put
24 forward to justify it.

25 Second, a Court must consider the impact that an

1 accommodation of the asserted constitutional right will have on
2 guards and other inmates and on the allocation of prison
3 resources generally and, third, the absence of ready
4 alternatives is evidence of the reasonableness of a prison
5 regulation. For that I'm citing *Fauconier v. Clarke*, 966 F.3d
6 265, a Fourth Circuit case from 2020.

7 Additionally, claims of gender discrimination are
8 analyzed under a heightened judicial standard of level of
9 scrutiny typically called intermediate scrutiny. However,
10 prison inmate's rights under the Equal Protection Clause may be
11 subject to restrictions that are reasonably related to a
12 legitimate penological interest. I'm citing *Wilson v. United*
13 *States*, a case out of the Southern District of West Virginia,
14 332 F.R.D. 505, and also *Veney v. Wyche*, 293 F.3d 726, a Fourth
15 Circuit case from 2002. When equal protection challenges are
16 raised in the prison context, courts must adjust the level of
17 scrutiny to ensure that prison officials are afforded the
18 necessary discretion to operate their facilities in a safe and
19 secure manner.

20 I do find the likelihood of success on the merits of
21 this claim insofar as the department has failed and continues
22 to fail to conduct the individualized housing assessment it now
23 claims it's conducting. Now the department's gender dysphoria
24 policy calls for a case-by-case assessment of whether
25 transgender inmates should be placed in facilities designated

1 for their gender identity, and that appears to be reasonably
2 related to legitimate penological interests. There's a valid
3 rational connection between the policy and interest in safety,
4 interest in treatment of a person's gender dysphoria, and the
5 Court recognizes there's reasons that assessment needs to take
6 place for persons with gender dysphoria because -- for various
7 reasons, including safety to other inmates at either
8 facility.

9 Now the plaintiff's requested accommodation to be
10 placed at a women's facility may have a significant impact on
11 correctional personnel and other inmates and on the allocation
12 of prison resources generally, and that is the reason why the
13 policy must be followed. And there is an allegation in this
14 case -- in fact, I think all the evidence showed that that
15 assessment has not yet taken place even though the plaintiff
16 has been -- had previously asked to be placed at a women's
17 facility when she was placed at WCI. But I find that the
18 deference due the prison officials in the context of a prison
19 case warrants giving them an opportunity to make the assessment
20 without the judicial mandate as to what the outcome of that
21 assessment should be.

22 Finally as to the last two counts, the ADA
23 discrimination claim and the Rehab Act, Section 504 disability
24 discrimination claim, those claims are based upon a denial of
25 medical services again, placement of the plaintiff in

1 administrative segregation, defendant's failure to modify its
2 housing policies to accommodate the plaintiff, and the
3 defendant's placement of the plaintiff in administrative
4 segregation in retaliation for complaints that she had made and
5 for consulting attorneys.

6 Title II of the ADA provides that no qualified
7 individual with a disability shall by reason of such disability
8 be excluded from participation in or denied the benefits of the
9 services, programs or activities of a public entity or be
10 subjected to discrimination by any such entity. Section 504 of
11 the Rehabilitation Act provides that no otherwise qualified
12 individual with a disability shall be solely, or by reason of
13 her own disability, excluded from participation in or denied
14 the benefits of or be subjected to discrimination under any
15 program activity receiving federal financial assistance.

16 In general, a plaintiff seeking recovery for a
17 violation of either statute must allege first that she has a
18 disability; second, she is otherwise qualified to receive
19 benefits of a public service program or activity; and, three,
20 that she was excluded from participation or denied benefits --
21 discriminated against on the basis of her disability.

22 Although the ADA and the Rehabilitation Act
23 generally are construed to impose the same requirements, they
24 do have different causation standards that I recognize. For
25 all of this, I'm citing *Constantine v. Rectors and Visitors of*

1 *George Mason University*, 411 F.3d 474, Fourth Circuit case from
2 2005.

3 States are obliged to make reasonable modifications
4 to enable a disabled person to receive the services or
5 participation that they would otherwise receive in various
6 programs and activities. The public entity is obligated to
7 make those modifications that do not fundamentally alter the
8 nature of the service or the activity of the public entity or
9 impose an undue burden. For that I'm citing *Miller v. Hinton*,
10 Fourth Circuit case from 2008, although unpublished, is
11 288 F.App'x 901.

12 Now as to the retaliation claim, there's three
13 elements of prima facie case of retaliation under the ADA:
14 that the plaintiff engaged in protected conduct, that she
15 suffered an adverse action, and that a causal link exists
16 between the protected conduct and the adverse action.

17 For the first element, the plaintiff must also show
18 that the defendant had actual awareness that the plaintiff was
19 engaged in protected activity.

20 For the second element, an adverse action is defined
21 as significant detriment or one that might well have dissuaded
22 a reasonable individual from making or supporting a charge of
23 discrimination. That's an objective fact-specific inquiry.

24 The third element is that the plaintiff must show a
25 but-for relationship between the adverse action in the

1 protected activity, and a close temporal relationship will give
2 rise to a sufficient inference of causation to satisfy the
3 prima facie requirement. However, once a prima facie case of
4 retaliation is made, the burden of proof shifts to the
5 defendant to provide a nonretaliatory justification for having
6 taken the adverse action.

7 I find some degree of likelihood of success on the
8 merits of these claims. The plaintiff has made a showing that
9 she was excluded from specifically medically necessary
10 treatment, and there was also a failure to conduct an
11 individualized housing assessment and that there were
12 expressions of animus that she received at least from WCI and
13 continuing into Patuxent with regards to the medical treatment.
14 Animus towards transgender persons were made in connection with
15 her contacts with certain staff while she was being denied
16 these benefits.

17 Now as to any retaliation, retaliation associated
18 with at least being placed in administrative segregation, I do
19 note that the defendants have proffered a nonretaliatory
20 justification for that placement. I don't think the plaintiff
21 has made an adequate showing that that justification is
22 pretextual, but her complaints go beyond simply placement in
23 administrative segregation and include the denial of medically
24 necessary services as well as failure to make an individualized
25 housing assessment.

1 Turning to the balance of the equities, I note that
2 the plaintiff has asserted several claims of injuries,
3 including continued alleged abuse at the hands of correctional
4 staff, continued denial of medical services and medical
5 treatment, and also increased dysphoria by being placed in a
6 male facility; I do think that the balance of equities favor
7 some form of injunctive relief here. The plaintiff's claims of
8 injury I note are depriving the department of its use of its
9 own discretion in making its decisions with respect to the
10 housing of the plaintiff. However, I don't find that the
11 injunctive relief that I am contemplating at this point would
12 deprive them of that discretion. In fact, it would require
13 them to exercise that discretion in making an individualized
14 housing assessment.

15 Turning to the public interest, there is a public
16 interest in ensuring the health and safety of prison inmates
17 irrespective of their status with respect to gender dysphoria
18 or any disability or medical condition or their status as
19 either cisgender or transgender. There's also a public
20 interest in ensuring that any special medical or mental health
21 needs that transgender or gender dysphoric inmates have, any
22 needs that they have are met and satisfied while they are
23 incarcerated.

24 Also for the defendants, I recognize public interest
25 in the safe administration of the prison system. There's also

1 a public interest in leaving to prison officials and treating
2 medical service providers the determination of whether it is
3 appropriate to place a transgender or gender dysphoric inmate
4 in the facility allowing for their gender identity. There's
5 also a public interest ensuring that courts are not enmeshed in
6 the minutiae of prison operations.

7 So the conclusion I have come to based upon that
8 analysis is to grant some form of injunctive relief here, so
9 the motion will be granted in part. That injunction will be
10 directed toward ensuring that the department conducts the
11 individualized housing assessment that it has claimed through
12 its counsel here today that it is already under way and has
13 already started to conduct. I will provide a time limitation
14 for that assessment subject to any request for extension for
15 good cause; that assessment must take place within the next 30
16 days.

17 There will also be an injunction to ensure that
18 Ms. Grey receives consistent hormonal treatment as she is
19 prescribed. I do have concerns about ensuring verification as
20 far as this goes because I don't want to be back here every
21 week based upon every dispute regarding every day of treatment
22 where Ms. Grey is claiming she has not received something that
23 the department contends she received. So I believe that the
24 most practicable way to effectuate that verification process is
25 to ensure that a department employee or official records the

1 administration of each hormone treatment. That I imagine has
2 to be conducted on a daily basis, perhaps even twice a day.

3 I am concerned about the accessibility of Ms. Grey's
4 alleged abusers to her while she's at Patuxent. I understand
5 this is matter the department still has under investigation,
6 and I imagine they have already undertaken to identify who
7 those alleged abusers are and to make sure they have no contact
8 with the plaintiff but I'm going to back that up with a court
9 order. So there will be injunctive relief to ensure that there
10 is no contact between Ms. Grey's alleged abusers, meaning the
11 correctional staff who are alleged to have assaulted her and to
12 have groped her for which there is medical evidence to support
13 and substantiate her claims, have no access to Ms. Grey pending
14 further order of the Court.

15 Now when I say pending further order of the court is
16 that I understand that this is a matter that the department is
17 investigating. If the department wants relief from this
18 injunction, they'll have to ask for it and it may be that
19 they'll have an opportunity to present evidence to determine --
20 or to support the notion that Ms. Grey's allegations are
21 unfounded.

22 Finally, there will be an injunction that the
23 department conduct a case-by-case individualized housing
24 assessment for Ms. Grey to determine whether or not she should
25 be placed at a women's facility. I think I've already touched

1 on that so I may be repeating myself on that regard.

2 As to the heater issue which is the sole basis upon
3 which I find an intolerable condition in segregation in
4 Ms. Grey's current situation, I'm going to ask for the
5 department to supplement its briefing on the motion as to that
6 issue. What I am contemplating is a potential affidavit from
7 Ms. Stewart about the status of any heating provisions in the
8 segregation unit.

9 First let me turn to counsel for the plaintiff to
10 make sure that the injunctive relief I prescribed here is
11 understood. Obviously I have not read verbatim the written
12 order I will issue to memorialize this injunction, but I want
13 to make sure you understand the general terms of it. You're on
14 mute, Ms. Weber.

15 MS. WEBER: Thank you. Thank you, Your Honor. The
16 one clarification we had, the part of the injunction about
17 recording the administration of medication, we just want to
18 clarify that's video recording?

19 THE COURT: Yes.

20 MS. WEBER: Thank you.

21 THE COURT: Thank you for requesting clarification.
22 Any request for clarification or questions from defendant's
23 counsel?

24 MS. RATLIFF: Your Honor, only just one tiny bit.
25 You indicated you'd like an affidavit from Ms. Stewart

1 regarding the status of the heater or the heating arrangements.
2 Do you want additional argument as well or is an affidavit
3 sufficient?

4 THE COURT: It may be that the affidavit is
5 sufficient. I would entertain any argument you want to make.
6 I'd ask that the brief not be exhaustive in length, but it
7 doesn't sound like it's something you really need to spend a
8 whole lot of time talking about, but you're free to make any
9 argument you feel is necessary and appropriate.

10 MS. RATLIFF: I appreciate it, Your Honor. Thank
11 you.

12 THE COURT: I'll set a deadline for that in the
13 written order that I issue.

14 MS. RATLIFF: Wonderful. Thank you, Your Honor.

15 THE COURT: Ms. Weber.

16 MS. WEBER: I'm sorry, Your Honor. My colleague
17 pointed out and I just want to make sure it wasn't an
18 oversight. The order doesn't mention anything about Ms. Grey's
19 access to razors and I just wanted to see --

20 THE COURT: Thank you for pointing that out. I did
21 specifically -- I was talking about hormone treatment as having
22 been medically prescribed. I do find that based upon the
23 testimony of Dr. Lowell and also the testimony of Assistant
24 Warden Stewart that razors should be provided to the plaintiff.
25 I'm not sure if this is an ongoing issue. I think the way

1 things were left with Assistant Warden Stewart is that now that
2 she was aware of the issue, she was going to do something about
3 it. In case she hasn't, I can include a provision in the order
4 that ensure that razors are provided.

5 MS. WEBER: Thank you, Your Honor.

6 MS. RATLIFF: Your Honor, I would respectfully ask
7 that that portion of the order say that it's provided within
8 applicable policies on disciplinary segregation with respect to
9 the safety and security of the institution.

10 THE COURT: Right. So I don't recall what the
11 testimony was on this point. I do recall Assistant Warden
12 Stewart essentially saying that persons on administrative
13 segregation have access to razors. I don't know if the same
14 applies to persons on disciplinary segregation. As I sit here
15 today, I don't remember whether there was any testimony in that
16 regard.

17 But I guess what I'll do, Ms. Ratliff, is include
18 some provision to say to the extent consistent with department
19 policies. There may be there's an assessment that Ms. Grey is
20 a security risk and she shouldn't have access to razors. This
21 is something I'm taking a close look at, so I don't want the
22 department to feel free to just make that up as an excuse. As
23 long as it's consistent with department security policies for
24 persons in disciplinary segregation to have access to razors or
25 for Ms. Grey specifically to have access to razors, then that

1 order will be made.

2 MS. RATLIFF: Thank you, Your Honor.

3 MS. WEBER: Your Honor, the discussion of the razors
4 brings up Ms. Grey was prescribed facial cream for hair
5 removal. There was testimony that there are substitutes over
6 the counter; we'd ask that that be included as well.

7 THE COURT: Okay.

8 MS. WEBER: Thank you.

9 THE COURT: I think some time will need to be
10 provided to the department in order to satisfy that condition,
11 at least. I don't know what's necessary in terms of the
12 procurement process for those over-the-counter medications.
13 I'll give them some time to do it and it will be subject to the
14 availability of any such over-the-counter medication.

15 MS. WEBER: Thank you.

16 THE COURT: Anything else from either party? I'll
17 also address the request for an injunction against retaliatory
18 conduct. Retaliatory conduct is illegal anyway and I don't
19 feel it's necessary for me to back this up with a court order.
20 The department should understand its legal obligations in this
21 regard and should not be engaged in any retaliatory conduct, so
22 the reason why the injunction as to that was not ordered is
23 because I don't find it specific enough. I don't find it
24 sufficiently narrowly drawn, and I find that it's unnecessary
25 because there's already legal obligations on the department

1 with respect to retaliation.

2 Anything else, Ms. Weber?

3 MS. WEBER: Not from plaintiffs. Thank you, Your
4 Honor.

5 THE COURT: Anything from you, Ms. Ratliff or
6 Ms. Donoho?

7 MS. RATLIFF: Your Honor, just one very small point
8 and I apologize for going back to the facial cream. I don't
9 know that the over-the-counter medication was ever identified
10 that it was the prospective substitution. I don't want the
11 department to be in a position where we're ordered to give
12 something, but we don't know what it is.

13 THE COURT: Right, yes. There was testimony that
14 these things exist, that these products exist so I did hear
15 that, but you're right. I don't believe that it was ever
16 specified. So the order that I will make will be subject to
17 the availability of any such facial inhibitor cream on an
18 over-the-counter basis. I think that will require the
19 department will need to make an assessment of whether or not
20 any such cream is available, and if they find it is available,
21 they need to start providing it.

22 MS. RATLIFF: Understood, Your Honor. I appreciate
23 the clarification.

24 THE COURT: Okay. And that's based upon the fact
25 that evidence has been presented, not in the form of

1 documentary evidence but testimony that the plaintiff was
2 prescribed a facial inhibitor cream, and it has not been
3 provided due to lack of availability. But I think that it
4 would be reasonable for the department to provide the
5 over-the-counter medication substitute if it's available.

6 Anything else from you, Ms. Ratliff?

7 MS. RATLIFF: No, Your Honor. Thank you very much.

8 THE COURT: Thank you-all. Thank you for sticking
9 around. I know it's late in the day, but I thought it would be
10 most efficient for me to render my ruling at the hearing rather
11 than have you wait around a few weeks for me to issue a written
12 ruling. A written order will follow, if not today, it will
13 follow early next week, and I guess we can conclude the
14 proceeding at this point. Ms. Moyer.

15 THE CLERK: This Honorable Court now stands
16 adjourned.

17 (Proceedings concluded at 2:14 p.m.)
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1 CERTIFICATE OF OFFICIAL REPORTER

2 I, Patricia G. Mitchell, Registered Merit Reporter,
3 Certified Realtime Reporter, in and for the United States
4 District Court for the District of Maryland, do hereby certify,
5 pursuant to 28 U.S.C. § 753, that the foregoing is a true and
6 correct transcript of the stenographically-reported proceedings
7 held in the above-entitled matter and the transcript page
8 format is in conformance with the regulations of the Judicial
9 Conference of the United States.

10 Dated this 10th day of January 2024.

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14 Patricia G. Mitchell, RMR, CRR
15 Federal Official Reporter
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